

TAXES: TRANSIENT OCCUPANCY TAXES

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TAXES: TRANSIENT OCCUPANCY TAXES

I. INTRODUCTION

A limited number of cities in the State of California grant an exemption from transient occupancy taxes to travelers representing the University on official University business. This chapter summarizes the rationale for such an exemption and provides procedures for claiming the exemption in cities where it is provided.

II. BACKGROUND

Section 7280 of the California Revenue and Taxation Code permits the legislative bodies of any city or county in the State of California to impose an occupancy tax for the privilege of occupying a room in a hotel, motel, or other lodging on any person who is not immune or exempt from such a tax, unless such occupancy is for any period of more than 30 days. As an "instrumentality of the State," the University of California claims exemption from such taxes. However, based on opinions issued by the California State Attorney General's office in 1965 and 1992, most cities refuse to grant University travelers an exemption from transient occupancy taxes.

Attorney General's Opinion 65-99 held that Federal, State, and local officers and employees traveling on official business are neither immune nor exempt from local transient occupancy taxes when the employing agency reimburses them for their hotel expenses. In 1992, the Attorney General's Office issued an updated opinion which restated the conclusion set forth in the 1965 opinion. Both opinions are based on the premise that it is the employee traveling on business who "contracts" for the hotel room, not the employing agency. Although the agency reimburses the employee's expenses, it is the employee who *personally* assumes responsibility for payment of the room charges. Moreover, the method of payment used by the traveler, whether by cash, personal check, personal credit card, State-issued check, or corporate credit card, is not relevant and does not alter the conclusion reached in the Attorney General's opinions.

II. BACKGROUND (Cont.)

However, according to an analysis made by the University General Counsel's Office, in situations where it is the employing agency, not the business traveler, that "contracts" for the room, i.e., where there is an actual contractual arrangement or agreement for payment (which need not be in writing) entered into between the agency and the hotel, the legal incidence of the tax falls directly on the agency. General Counsel concluded that in such a situation the University traveler would be justified in claiming immunity from the transient occupancy tax, since the University has agreed to pay and the hotel expects to receive and has the right to collect payment *directly* from the University.

III. STATUS OF UNIVERSITY TRAVELERS

While the majority of cities and counties in the State of California do not grant University travelers exemption from transient occupancy taxes, eleven cities located within the vicinity of University of California campuses do grant such an exemption. A distinction is made between payment made directly by the traveler and payment billed to and paid directly by the University.

A. TRAVEL PAID DIRECTLY BY THE TRAVELER

The cities of Los Angeles, Costa Mesa, Santa Ana, Irvine, Newport Beach, Del Mar, Riverside, Coronado¹, and Oakland provide an exemption to University travelers who pay hotel room charges directly, upon completion of a city form or a certificate of exemption for governmental agencies.

B. TRAVEL BILLED TO AND PAID DIRECTLY BY THE UNIVERSITY

The cities of San Francisco and San Diego grant an exemption from such taxes if hotel room charges are billed directly to the University.

The chart in Exhibit A details the status of the University's exemption from local transient occupancy taxes in California cities frequently traveled to by University travelers.

¹ Hotel room charges in these cities may also be billed to the University for payment.

IV. PROCEDURES FOR CLAIMING AN EXEMPTION

In order to claim an exemption from transient occupancy taxes, University travelers must request a copy of the city or county taxing authority's exemption certificate (see sample form in Exhibit B) *when checking in*. As an alternative, if a local jurisdiction form is not available, the Transient Occupancy Tax Exemption Certificate for Governmental Agencies (Exhibit C) may be used to claim the exemption. **(A copy of this form should be distributed to travelers who travel to cities that grant an exemption.)** In addition, the traveler should be prepared to provide proof, if required, that he/she is a representative or employee of the University of California, traveling on official University business. (For example, an employee identification card, business card, corporate travel card, etc. will serve this purpose.)

V. COLLECTION OF TRANSIENT OCCUPANCY TAXES BY THE UNIVERSITY

Some cities may request that the University collect and pay over transient occupancy taxes in connection with the use of housing (or parking facilities) when rooms on campus are rented to University guests or visitors. However, under Article IX, Section 9 of the California Constitution, The Regents are granted constitutional immunity from interference by municipal governmental entities to ensure that the University can effectively pursue its public mission, including the power to manage and regulate the affairs and property of the University. In this respect, the University's operation of housing and parking facilities is a recognized exempt activity. Accordingly, the University has taken the position that, as a matter of law, it is immune from municipal interference in the conduct of its exempt activities and cannot be compelled to act as a collector of transient occupancy taxes.

VI. RESPONSIBILITIES

It is the responsibility of the accounting officer to ensure that information concerning the transient occupancy tax exemption for University business travelers is distributed to the appropriate departments.

It is the responsibility of the University traveler to claim exemption from transient occupancy taxes in the cities that provide such an exemption, as indicated in this chapter.

VII. REFERENCES

California Revenue and Taxation Code, Section 7280

Attorney General's Opinion (AG Ops 65-99).

Attorney General's Opinion dated May 7, 1992.

Business and Finance [Bulletin G-28](#), Policy and Regulations
Governing Travel

University Counsel Romulus B. Portwood, Letter to Director
Donald L. Alter on Exemption from Transient Occupancy
Taxes, April 9, 1993.

Historical note: Original Accounting Manual chapter first
published 12/30/94. Revised 3/31/98, 12/30/98, 9/30/99, and
9/30/11 analyst—John Barrett.

| <u>CAMPUS/ CITY/COUNTY</u> | <u>EXEMPTION GRANTED</u> | <u>REMARKS</u> |
|--------------------------------|------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <u>Oakland</u> | | |
| Oakland | Yes | A city exemption form must be completed by the University traveler when registering at the hotel. |
| <u>Riverside</u> | | |
| Riverside | Yes | Exemption will be granted to University travelers upon presentation of proper identification. |
| <u>San Diego</u> | | |
| Coronado Del Mar | Yes | Exemption is granted upon presentation of University employee identification and completion of an exemption certificate which is available at most hotels/motels. |
| San Diego | Yes | Exemption will be granted only if the University issues a purchase order and the hotel/motel bills the University directly, or payment is made on a University credit card or University check. This requirement is also imposed on Federal and State government agencies. |
| <u>San Francisco</u> | | |
| San Francisco | Yes | Exemption is granted only if the bill is sent to the University for payment. |
| <u>Santa Barbara</u> | | |
| Santa Barbara | No | The city ordinance does not provide exemption to State and University employees; exemption is granted only to Federal employees when direct billing is arranged. |

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ACCOUNTING MANUAL

| <u>CAMPUS/ CITY/COUNTY</u> | <u>EXEMPTION GRANTED</u> | <u>REMARKS</u> |
|--------------------------------|------------------------------|--------------------------------------------------------------------|
| <u>Santa Cruz</u> | | |
| Santa Cruz | No | <i>Exemption is no longer granted to University employees.</i> |

CITY OF LOS ANGELES
Office of the City Clerk -- Tax & Permit Division
TRANSIENT OCCUPANCY TAX

Exemption Certificate for Governmental Agencies -- Sec. 21.7.4 (a), (b), and (c).

DATE: _____

TO: _____
Name of Hotel, etc.) Address

This is to certify that I, the undersigned, am a representative or employee of the Governmental Agency indicated below; that the charges for the occupancy at the above establishment on the dates set forth below have been, or will be, paid for by such governmental Agency; and that such charges are incurred in the performance of my official duties as a representative or employee of such Governmental Agency.

DATES OF OCCUPANCY _____

| | |
|---------------------|-----------------------------|
| Governmental Agency | Signature of Representative |
|---------------------|-----------------------------|

Location of Home Office _____

NOTE: Operators of Hotels, etc., should not accept this certificate unless the person presenting it shows satisfactory credentials. A separate exemption certificate is required for each occupancy and for each representative. All records shall be retained for a period of 3 years.

(SEE OVER)

Form No. 542.320(A)

Reverse Side:

TRANSIENT OCCUPANCY TAX

Ordinance No. 127757, operative August 1, 1964, includes the following:

SEC. 21.7.4 EXEMPTIONS

No tax shall be imposed upon:

- (a) Any person as to whom, or any occupancy as to which, it is beyond the power of the City to impose the tax herein provided;
- (b) Any Federal or State of California officer or employee when on official business;
- (c) Any officer or employee of a foreign government who is exempt by reason of express provision of the federal law or international treaty;
- (d) Any person to whom rent is charged at the rate of \$2.00 per day or less.

No exemption shall be granted under subsections (a), (b) or (c) except upon a claim therefore made at the time rent is collected and under penalty of perjury upon a form prescribed by the City Clerk.

Exemption certificates, per the sample on the reverse side of this card are available upon request. You may print your own forms, as per this sample, if you desire.

(SEE OVER)

Form No. 542.430(B)

EXHIBIT C

* TRANSIENT OCCUPANCY TAX EXEMPTION CERTIFICATE
FOR GOVERNMENTAL AGENCIES

NOTE: This form must be completed at the time rent is collected, and must be retained by the hotel/motel operator. The hotel/motel operator should not accept this certification unless the person presenting it shows satisfactory credentials.

To: _____
Name of hotel/motel

Address

City

This is to certify that I, the undersigned, am a representative or employee of a Governmental Agency, the UNIVERSITY OF CALIFORNIA, located in CALIFORNIA; that the charges for occupancy at the above establishment on the date(s) set forth below, have been, or will be, paid for by such Governmental Agency; and that such charges are incurred in the performance of my official duties as a representative or employee of such Governmental Agency.

Date(s) of Occupancy:

Governmental Agency:

Location: UNIVERSITY OF CALIFORNIA

Executed at _____, (name of state), this _____ day of
_____(month), 20_____.

I declare under penalty of perjury that the foregoing is true and correct:

Signature of person claiming exemption

Home Address:

